

HOUSE No. 861

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to repeal no fault motor vehicle insurance.

PETITION OF:

NAME:

Garrett J. Bradley

DISTRICT/ADDRESS:

3rd Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 910 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO REPEAL NO FAULT MOTOR VEHICLE INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 34A of said chapter 90 is hereby amended by striking lines 68 through 133 in their
2 entirety.

3 SECTION 2. Section thirty-four M of said chapter ninety is hereby repealed.

4 SECTION 3. Section thirty-four N of said chapter ninety is hereby repealed.

5 SECTION 4. The second paragraph of section 113C of said chapter 175 is hereby amended by striking
6 out the words “of medical coverage, so-called, to a limit of at least five thousand dollars” and by inserting
7 in place thereof the following words:— “of medical and wage protection coverages, each to a limit of no
8 less than five thousand dollars, and up to limits of at least one hundred thousand dollars.”

9 SECTION 5. Section 113H of said chapter 175 is hereby amended by striking out subsection (A) and
10 inserting in place thereof the following subsection:—

11 (A) Insurance companies undertaking to issue motor vehicle liability policies or bonds, both as defined in
12 section 34A of chapter 90, shall cooperate in the preparation and submission of a plan which shall provide
13 motor vehicle insurance to applicants who have been unable to obtain insurance through the method by
14 which insurance is voluntarily made available; except that the plan shall provide that no insurance
15 company shall be required to issue such policy or execute such bond if:

16 (1) The applicant or any person who usually drives the motor vehicle has failed to pay an insurance
17 company any motor vehicle insurance premiums due or contracted during the preceding twelve months;
18 or

19 (2) Any person who usually drives the motor vehicle does not hold or is not eligible to obtain an
20 operator’s license; or

21 Such a plan shall provide for the fair and equitable apportionment among such insurance companies of
22 premiums, losses or expenses, or any combination thereof.

23 Such a plan shall provide that at least the following coverages be made available to the applicant:

24 (1) Bodily injury liability and property damage liability coverage in at least the minimum amounts
25 required by law.

26 (2) Medical payment coverage to a limit of at least five thousand dollars and up to limits of at least one
27 hundred thousand dollars;

28 (3) Wage protection coverage to limits of no less than five thousand dollars and up to limits of at least one
29 hundred thousand dollars;

30 (4) Increased limits of bodily injury liability coverage in an amount to bring the total bodily injury
31 liability coverage available for any one accident to two hundred fifty thousand dollars per person and five
32 hundred thousand dollars per accident.

33 (5) Increased property damage liability limits in an amount to bring the total property damage liability
34 coverage available for any one accident to fifty thousand dollars;

35 (6) Uninsured motorist limits in an amount up to the bodily injury liability limits of the policy;

36 (7) Physical damage insurance, which shall mean: (a) collision coverage or limited collision coverage, (b)
37 fire and theft coverage, or (c) comprehensive coverage, so-called, as those coverages are defined in
38 section 34A and 34O of chapter 9O and section 1130 of this chapter. The plan shall permit the refusal of
39 collision, fire, theft or comprehensive coverage or the charging of rates at the discretion of the insurer,
40 under the following circumstances:

41 (i) comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by
42 persons convicted within the most recent five year period of any category of vehicular homicide, auto
43 insurance related fraud, or motor vehicle theft;

44 (ii) comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by
45 persons who have, within the most recent five year period, made an intentional and material
46 misrepresentation in making claim under such coverages;

47 (iii) Collision coverage on a vehicle customarily driven by or owned by persons who have been involved
48 in four or more accidents in which such person has been deemed to be at fault in excess of fifty percent
49 within the three years immediately preceding the effective date of the policy;

50 (iv) Comprehensive or fire and theft coverages on a vehicle customarily driven by or owned by persons
51 who have two or more total theft or fire claims after January 1, 1984 and within the three years
52 immediately preceding the effective date of the policy;

53 (v) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven, or owned by
54 persons convicted one time within the most recent three year period of any category of driving while
55 under the influence of alcohol or drugs;

(vi) Comprehensive, fire and theft or collision coverage on any motor vehicle for which a salvage title has been issued by the registrar of motor vehicles unless a new certificate of title has been issued pursuant to section twenty D of chapter ninety D; or

(vii) Comprehensive, fire and theft or collision coverage on a high-theft vehicle which does not have at least a minimum antitheft or auto recovery device as prescribed by the commissioner of insurance. The commissioner may designate as a "high-theft vehicle" any vehicle, classified according to make, model and year of manufacture, which has both above-average incidence of theft and above-average original sales price, and may prescribe appropriate anti-theft or auto recovery devices for such vehicles.

SECTION 6. Chapter 175 of the General Laws is hereby amended by adding the following section:—

Section 113V. Every policy issued or delivered in the commonwealth shall be deemed to provide medical payments coverage in limits of at least five thousand dollars unless the policyholder affirmatively elects to purchase no such coverage for himself and for members of his household.

The medical payment coverage provision of a motor vehicle liability policy or bond shall provide for payment, without regard to negligence or gross negligence or fault of any kind, to the named insured in any such motor vehicle liability policy, the obligor of any motor vehicle liability bond, members of the insured's or obligor's household, any authorized operator or passenger of the insured's or obligor's motor vehicle, including a guest occupant, and pedestrian struck by the insured's or obligor's motor vehicle, of all reasonable expenses incurred within two years from the date of accident for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services; provided, however, that no such payment shall be required to the extent such payment has been made by a health insurance policy or other contract with an insurance company, health maintenance organization, a non-profit hospital or medical service corporation or any other third party compensation system which is designated by the commissioner of insurance as providing the acceptable level of benefits. Nothing in this section shall be construed to limit in any way, an individual's choice of a physician, hospital, or other health care provider or course of medical treatment.

The medical payments coverage of two or more policies may be added together, combined, or stacked if required to pay an injured person's reasonable and necessary medical expenses. All such expenses shall be submitted first to the named insured's policy covering the vehicle the person was occupying when injured or, if the injured person was a pedestrian, to the named insured's policy covering the vehicle which struck the individual. An insured who is not a named insured on any policy providing medical payments coverage shall next submit a claim to the policies of resident relatives; provided, however, if there are two or more policies which provide such coverage and if the claim does not exceed the combined total of all such policies, a pro rata contribution will be made. If there are two or more policies which provide such coverage and if the claim exceeds the combined total of all such policies, the limit of all policies will be paid. A person who is named insured on a policy providing medical payments coverage shall next submit a claim:

(a) to the policy on which such person is named insured; provided, however, if there are two or more such policies which provide such coverage a pro rata contribution will be made if the claim does not exceed the

combined total of all such policies. If the claim exceeds the combined total of all such policies the limit of all policies will be paid.

(b) to the policy of resident relatives. If there are two or more policies which provide such coverage and if the claim does not exceed the combined total of all such policies, a pro rata contribution will be made. If the claim exceeds the combined total of all such policies the limit of all policies will be paid.

SECTION 7. Said Chapter 175 is hereby amended by adding the following section:—

Section 113W. Every policy issued or delivered in the Commonwealth shall be deemed to provide wage protection coverage in limits of at least five thousand dollars unless the policyholder affirmatively elects to purchase no such coverage for himself and for members of his household.

The wage protection coverage shall provide for payment to the named insured in any such motor vehicle liability policy, the obligor of any motor vehicle liability bond, members of the insured's or obligor's household, any authorized operator or passenger of the insured's or obligor's motor vehicle, including a guest occupant, and any pedestrian struck by the insured's or obligor's motor vehicle, unless any of the aforesaid is a person entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, in the case of persons employed or self-employed at the time of any accident of any amounts actually lost by reason of inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of any injured person's employment, and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that had he not been injured, the insured person would have performed not for income but for the benefit of himself and/or members of his household, and in the case of persons not employed or self-employed at the time of any accident of any loss by reason of diminution of earning power and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of this household, as a result of bodily injury, sickness or disease, including death at any time resulting there from, caused by accident and not suffered intentionally while in or upon, or while entering into or alighting from, or being struck as a pedestrian by, the insured's or obligor's motor vehicle, without regard to negligence or gross negligence or fault of any kind, to the amount or limit of at least five thousand dollars on account of injury to or death of any person, except that payments for loss of wages or salary or their equivalent or, in the case of persons not employed, loss by reason of diminution of earning power, shall be limited to amounts actually lost by reason of the accident and further limited (1) in the case of persons entitled to wages or salary or their equivalent under any program for continuation of said wages or salary or their equivalent to any amount that, together with any payments due under such a program, will provide seventy-five percent of the greater of any such person's average weekly wage or salary or its equivalent for the year immediately preceding the accident or the person's average weekly wage or salary at the time of the accident provided that the insurer shall reimburse those wage continuation programs or their equivalent which provide for accumulated benefits which can be converted into either cash or additional retirement credit for the amount said program or its equivalent actually pays to the insured, not to exceed seventy-five percent of the greater of the insured's average weekly wages or salary or its equivalent for the year immediately preceding the accident or the insured's average weekly wage or salary at the time of

the accident, or (2) in the case of persons not entitled to wages or salary or their equivalent under any program for continuation of said wages or salary or their equivalent to any amount that will provide seventy-five percent of the greater of any such person's average weekly wage or salary or its equivalent for the year immediately preceding the accident or the person's average weekly wage or salary at the time of the accident. In any case where amounts paid for loss of wage, salary or their equivalent are reduced as a result of any program for continuation of the same and such reduction produces a subsequent loss, as when the limit of any such program for continuation of wage or salary or their equivalent is exhausted with the result that an injured person cannot recover for a later injury or illness as he would have been entitled to but for such a reduction, such subsequent loss to an amount equaling the reduction in payments made in accordance with this section shall, if incurred within one year after the receipt of the last benefit provided under this section, be treated as a loss of wages, salary or their equivalent incurred as a result of the injury to which wage protection coverage applied. In all cases where an insured is compensated under such a wage continuation program and also recovers these benefits from another source, he shall be entitled to reimburse the wage continuation program with no loss in standing under such a program. Coverage under this section shall also provide for payment, to the named insured or obligor and members of their households, all amounts defined in this section in any case where such persons incur such expense or loss as a result of such injury while in, upon, entering into or alighting from, or by being struck as a pedestrian by, a motor vehicle not insured by a policy or bond providing such coverage.

The wage protection coverage of two or more policies may be added together, combined or stacked if required to compensate an injured person for lost wages, salary or their equivalent or a loss by reason of diminution of earning power. All such losses shall be submitted first to the named insured's policy covering the vehicle the person was occupying when injured or, if the injured person was a pedestrian, to the named insured's policy covering the vehicle which struck the individual. An insured who is not a named insured on any policy providing wage protection coverage shall next submit a claim to the policies of resident relatives. If there are two or more policies which provide such coverage and if the claim does not exceed the combined total of all such policies, a pro rata contribution will be made. If there are two or more policies which provide such coverage and the claim exceeds the combined total of all such policies, the limit of all policies will be paid. A person who is named insured on a policy providing wage protection coverage shall next submit a claim:

(a) To the policy on which such person is the named insured; provided, however, if there are two or more such policies which provide such coverage a pro rata contribution will be made if the claim does not exceed the combined total of all such policies. If the claim exceeds the combined total of all such policies, the limit of all policies will be paid.

(b) To the policy of resident relatives. If there are two or more policies which will provide such coverage and if the claim does not exceed the combined total of all such policies, a pro rata contribution will be made. If the claim exceeds the combined total of all such policies, the limit of all policies will be paid.

Each insurer providing coverage under this section shall issue to any person purchasing a motor vehicle liability policy or bond, at his option, a policy endorsement, approved as to content by the commissioner of insurance and subject to such other regulations regarding said endorsement as the commissioner may from time to time make after appropriate hearing, which shall provide that there shall be deducted from amounts that would otherwise be or become due to the policyholder alone or to the policyholder and

176 members of his household, as the policyholder elects, an amount of either one hundred dollars, two
177 hundred and fifty dollars, five hundred dollars, one thousand five hundred dollars, or two thousand five
178 hundred dollars, again as the policyholder elects, said amount to be deducted from the amount otherwise
179 due each person subject to the deduction.

180 SECTION 8. Section 6D of chapter 231 of the General Laws is hereby repealed.

181 SECTION 9. Sections 1, 2, 3, 4, 5, 6 and 7 shall take effect and apply to policies or bonds issued or
182 renewed on or after January 1, 2002. Section 8 shall take effect and apply to causes of action that accrue
183 on or after January 1, 2002.